

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Amendment of the Commission's )  
Rules to Preempt State and Local )  
Regulation of Tower Siting for )  
Commercial Mobile Services Providers )

RM - 8577

To: The Commission

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REPLY COMMENTS  
OF THE  
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA")/<sup>1</sup>, by its attorneys, in response to the Public Notice Report No. 2052, (released January 18, 1995), herewith submits its Reply Comments in the above-referenced proceeding.

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<sup>1</sup> PCIA is the consolidation of Personal Communications Industry Association and the National Association of Business and Educational Radio ("NABER"). PCIA is an international trade association created to represent the interests of both commercial mobile radio service (CMRS) and private mobile radio service (PMRS) users and businesses involved in all facets of the personal communications industry. PCIA's federation of Councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association ("SOMA"), the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

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PCIA has reviewed the dozens of Comments filed in this proceeding. As expected, there is a clear delineation between those parties that support and oppose CTIA's petition. Generally, the supporters of Federal preemption include wireless providers and associated businesses; the opponents include individual states, municipalities, and legislators. In their totality, the Comments filed in this rule making proceeding evidence a robust debate that requires further scrutiny by the Commission. The record clearly demonstrates that state and local zoning activities in some cases are halting or jeopardizing the swift and economical deployment of personal communications services, which is contrary to the pro-competitive and public interest policies of the Federal Communications Commission. PCIA nonetheless recognizes that states and localities have a legitimate interest in ensuring that environmental, health and aesthetic concerns are addressed. It is precisely the need for a balanced resolution in this matter that makes the expeditious conduct of a formal rule making both appropriate and necessary.

In every area of federal regulation there is a need to balance competing federal, state and local interests. Although PCIA strongly believes that an improved process for tower site selection is critical to all forms of the wireless industry, PCIA admits that there should be room for compromise among the competing federal, state and local interests. As

indicated in its Comments in this proceeding, PCIA has played an active role in monitoring and debating these regulatory matters. PCIA members and staff attend and participate in meetings across the country with respect to tower siting issues. As always, PCIA continues to explore areas of compromise. However, as difficult as it may be to reach any consensus on these matters, the Commission should seize this opportunity to foster meaningful debate so that the competing interests may better educate themselves on these matters and, hopefully, reach agreement on at least some of the issues.

PCIA's review of the Comments revealed at least two major facts: (1) there is a rapidly growing number of communities in all regions of the country proposing and/or enacting tower siting regulations, and (2) there is a strong misconception as to what "federal preemption" really means.

Comments filed by many of the communications providers indicate that it is becoming increasingly difficult, and expensive, to comply with both federal and local tower siting regulations -- many of which conflict with one another. For example, McCaw Cellular Communications, Inc. cited its experiences with zoning regulations in West Hollywood, California and Cold Spring, New York. The Sprint Corporation says that it took them 2 1/2 years to gain local approval on one site in Fluvanna County, Virginia to build a cellular tower. Sprint had similar experiences in Tallahassee, Florida

and Upper Allen Township, Pennsylvania. Southwestern Bell Mobile Systems, Inc. provided examples of zoning problems in South Texas and the Midwest. And, the United States Cellular Corporation provided 15 examples throughout the country where local zoning ordinances prohibited or seriously delayed the construction of their towers. An overview of the Comments clearly indicates that the tug-of-war between federal and local regulations and objectives is continuing to escalate.

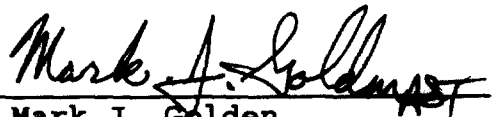
As the Commission debates the facts and opinions surrounding these issues, some of the misconceptions about "federal preemption" must also be addressed. For example, many localities and counties (such as Prince William County, Virginia) argue that local government planning and zoning boards and local elected officials must reserve their right to manage local land use. Senator Edward Kennedy expressed his concern that federal preemption would deprive communities and cities across the country of their power to effectively control the impact of cellular telephone towers in their neighborhoods. However, the parties that oppose CTIA seem to disregard the fact that federal preemption would merely provide certain guidelines within which state and local governments could exercise their power --- there would not be a total loss of discretion of power on the state or local level. In the past, when the Commission has exercised its preemption powers, the states and local governments were not stripped of their regulatory powers. Rather, the Commission

ordered the states and local governments to craft and implement their regulations in such a way as to reasonably accommodate the federal scheme of communications, and to represent the minimum practicable regulation to accomplish the local authority's legitimate purpose. See, e.g., PRB-1 (Amateur Radio Preemption), 101 FCC 2d 952 (1985).

PCIA continues to urge the Commission to issue a Notice of Proposed Rule Making seeking to preempt state zoning and other regulations imposed upon CMRS provider tower sites. PCIA is willing to commit its staff and resources to the matters raised in this proceeding and work with the Commission to reach a compromise among the numerous competing interests.

Respectfully submitted,

**PERSONAL COMMUNICATIONS INDUSTRY  
ASSOCIATION**

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March 6, 1995

**CERTIFICATE OF SERVICE**

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C. hereby certify that I have on this 6th day of March, 1995 sent via first class mail, postage prepaid, a copy of the foregoing **Reply Comments of the Personal Communications Industry Association** to the following:

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